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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/646,734
Filing Date: August 25, 2003
Appellant(s): MOELLER ET AL.

Mr. Gary D. Yacura
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05-24-2010 appealing from the Office action mailed 08-24-2009.

The appeal brief is filed in the new format under the revised BPAI final rule before the effective date of the BPAI final rule. The Office published the BPAI final rule to amend the rules governing practice before the BPAI in ex parte patent appeals. See Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals; Final Rule, 73 FR 32938 (June 10, 2008), 1332 Off. Gaz. Pat. Office 47 (July 1, 2008). However, the effective date for the BPAI final rule has been delayed. See Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals; Delay of Effective and Applicability Dates, 73 FR 74972 (December 10, 2008). In the notice published on November 20, 2008, the Office indicated that the Office will not hold an appeal brief as non-compliant solely for following the new format even though it is filed before the effective date. See Clarification of the Effective Date Provision in the Final Rule for Ex Parte Appeals, 73 FR 70282 (November 20, 2008). Since the appeal brief is otherwise acceptable, the Office has accepted the appeal brief filed by appellant.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

Orfield	(US PAT. 4,319,088)	03-09-1982
Ritter	(US PAT. 4,686,693)	08-11-1987
Shdema et al.	(US 2002/0072816)	06-13-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

4. Claims 108-118 are rejected under 35 U.S.C. 103(a) as being unpatentable over Orfield (US PAT. 4,319,088) in view of Shdema et al (US 2002/0072816).

Consider claim 108, Orfield teaches a sound masking system (sound masking apparatus) for masking sound in a physical environment (interior of builder 12, fig. 3), said sound masking system comprising:

a communication network for said physical environment (network formed by master sound masking units 14 and slave sound masking units 16 interconnected by cable 18; grid layout in fig. 4; col. 5, lines 56-63) (the network carries/communicates audio and masking signals from master to slave units, col. 6, lines 1-8);

a plurality of sound masking units (slave sound masking units 16, fig.3), at least some of said sound masking units including a circuit (fig. 2) configured for a sound masking signal generator (speaker 62) and a communication interface (jack 71, fig. 5) for coupling (fig. 5) to said communication network for receiving (slave out 64 from master unit 14 are carried to and tapped at point 86 of slave unit 16, fig. 1, 2, col. 4, lines 5-7 and 28-31) a plurality of control signals (masking sound signals from master unit 14) over said communication network including a masking volume signal (slave out 64 of amplifier 22 output adjusted by 48, fig. 1) and a masking frequency signal (slave out 64 of equalizer 24 output adjusted by 46, fig. 1), and said sound masking signal generator (speaker 62) being responsive (via 86, 66, 68, col. 4, lines 3-21) to said masking volume signal and said sound masking frequency signal (slave out signals

tapped at 86) for generating a sound masking output signal (output through speaker 62), said sound masking output signal having a volume derived from said masking volume signal and a frequency characteristic derived from said sound masking frequency signal (slave out signal 64 tapped at 86 has components from amplifier 22 and equalizer 24); a control unit (14) configured to generate said control signals including said masking volume signal and said masking frequency signal (slave out signal 64 tapped at 86 has components from amplifier 22 and equalizer 24); but Orfield does not disclose that the receiving and transmitting of the control signals over the communication network is performed by a digital processor; and that the control unit has a communication interface for coupling to the communication network for transmitting said control signals to selectively control operation of the plurality of sound masking units.

Shdema discloses a digital processor receives and transmits control signals over a communication network (see figs 1-5) and an audio speaker network / communication network comprising a plurality of speaker units including a communication interface for coupling speaker units (114) (i.e. sound masking units) to the communication network for receiving and transmitting control signals over the communication network (Fig. 1; page 3, [0028]-[0030]); and a control unit (see fig.2 102) that has a network interface for coupling the control unit to the communication network for transmitting control signals over said communication network to the speaker units (i.e. sound masking units), and the control signals including signals for selectively controlling the operation of said sound masking units (Fig. 1 and see page 4 [0032]-[0045]) in order to allow an operator

to remotely control the plurality of speaker units, which provides ease of adjusting a plurality of parameters such as volume, speaker equalization, and sound delay at a desired time; to receive status and/or control information from the speaker unit; and to provide more flexibility in a speaker system/network by allowing an operator to transmit a message to only selected speakers in a network, or in multiple networks or zones, rather than all speakers in a network or zone.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Orfield with the teaching of Shdema to utilize a audio system for use in a speaker network system (such as the speaker network system of Orfield) comprising: a control unit to transmit control data (audio data does not need to be transmitted to the speaker unit because the speaker unit of Orfield comprising a sound generator which provide an audio data to a digital signal processor) to a plurality of speaker units (i.e. sound masking units), wherein the speaker unit comprising a receiver for receiving the control data and a transmitter for transmitting status and/or control information from the sound masking unit to the control unit in order to allow an operator to remotely control the plurality of speaker units, which provide ease of adjusting a plurality of parameters such as volume, speaker equalization, and sound delay at a desired time; to receive status and/or control information from the speaker unit; and to provide more flexibility in a speaker system network by allowing an operator to transmit a message to only selected speakers in a network, or in multiple networks or zones, rather than all speakers in a network or zone.

Consider claim 109, Orfield as modified by Shdema teaches the sound masking system, wherein said sound masking unit includes an address component for recognizing control signals intended for the sound masking unit associated with said address component(in Shdema, see figs 1-4 and see page 9[0104]-[0108]).

Consider claim 110, Orifield discloses the plurality of sound masking units are associated with a plurality of sound masking zones, each sound masking unit being associated with one of the plurality of sound masking zones, and said sound masking units providing sound masking for the associated sound masking zone independently of said other sound masking zones (see figs 1-4 and col. 4 line 65-col. 5 line 67).

Consider claim 111, Orifield as modified discloses the sound masking system, wherein said sound masking units associated with each of said sound masking zones provide a sound masking output tailored for said associated sound masking zone and said sound masking output being based on said masking volume and said masking frequency signals (see figs 1-4 and col. 4 line 65-col. 5 line 67).

Consider claim 112, Orifield teaches that the sound masking system, further comprising a plurality of zones, and one or more of said sound masking units being configured for one or more of said zones (see figs 1-4 and col. 4 line 65-col. 5 line 67).

Consider claim 113, Orifield as modified discloses the sound masking system, wherein said zones includes one or more of a sound masking zone, a timer zone, and a switch zone (see figs 1-4 and col. 4 line 65-col. 5 line 67).

Consider claim 114, Orfield teaches a sound masking system (sound masking apparatus) for masking sound in a physical environment (interior of builder 12, fig. 3), said sound masking system comprising:

a communication network for said physical environment (network formed by master sound masking units 14 and slave sound masking units 16 interconnected by cable 18; grid layout in fig. 4; col. 5, lines 56-63) (the network carries/communicates audio and masking signals from master to slave units, col. 6, lines 1-8);

a plurality of sound masking units (slave sound masking units 16, fig.3), at least some of said sound masking units including a circuit (fig. 2) configured for a sound masking signal generator (speaker 62) and a communication interface (jack 71, fig. 5) for coupling (fig. 5) to said communication network for receiving (slave out 64 from master unit 14 are carried to and tapped at point 86 of slave unit 16, fig. 1, 2, col. 4, lines 5-7 and 28-31) a plurality of control signals (masking sound signals from master unit 14) over said communication network including a masking volume signal (slave out 64 of amplifier 22 output adjusted by 48, fig. 1) and a masking frequency signal (slave out 64 of equalizer 24 output adjusted by 46, fig. 1), and said sound masking signal generator (speaker 62) being responsive (via 86, 66, 68, col. 4, lines 3-21) to said masking volume signal and said sound masking frequency signal (slave out signals tapped at 86) for generating a sound masking output signal (output through speaker 62), said sound masking output signal having a volume derived from said masking volume signal and a frequency characteristic derived from said sound masking frequency signal (slave out signal 64 tapped at 86 has components from amplifier 22

and equalizer 24); a control unit (14) configured to generate said control signals including said masking volume signal and said masking frequency signal (slave out signal 64 tapped at 86 has components from amplifier 22 and equalizer 24); and a plurality of zones(see fig.3,4), and one or more of said sound masking units(14,16) being configured for one or more of said plurality of zones(see figs 1-4 and col. 4 line 65-col. 5 line 67); but Orfield does not disclose that the receiving and transmitting of the control signals over the communication network is performed by a digital processor; and that the control unit has a communication interface for coupling to the communication network for transmitting said control signals to selectively control operation of the plurality of sound masking units.

Shdema discloses a digital processor receives and transmits control signals over a communication network (see figs 1-5) and an audio speaker network / communication network comprising a plurality of speaker units including a communication interface for coupling speaker units (114) (i.e. sound masking units) to the communication network for receiving and transmitting control signals over the communication network (Fig. 1; page 3, [0028]-[0030]); and a control unit (see fig.2 102) that has a network interface for coupling the control unit to the communication network for transmitting control signals over said communication network to the speaker units (i.e. sound masking units), and the control signals including signals for selectively controlling the operation of said sound masking units (Fig. 1 and see page 4 [0032]-[0045]) in order to allow an operator to remotely control the plurality of speaker units, which provides ease of adjusting a plurality of parameters such as volume, speaker equalization, and sound delay at a

desired time; to receive status and/or control information from the speaker unit; and to provide more flexibility in a speaker system/network by allowing an operator to transmit a message to only selected speakers in a network, or in multiple networks or zones, rather than all speakers in a network or zone.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Orfield with the teaching of Shdema to utilize a audio system for use in a speaker network system (such as the speaker network system of Orfield) comprising: a control unit to transmit control data (audio data does not need to be transmitted to the speaker unit because the speaker unit of Orfield comprising a sound generator which provide an audio data to a digital signal processor) to a plurality of speaker units (i.e. sound masking units), wherein the speaker unit comprising a receiver for receiving the control data and a transmitter for transmitting status and/or control information from the sound masking unit to the control unit in order to allow an operator to remotely control the plurality of speaker units, which provide ease of adjusting a plurality of parameters such as volume, speaker equalization, and sound delay at a desired time; to receive status and/or control information from the speaker unit; and to provide more flexibility in a speaker system network by allowing an operator to transmit a message to only selected speakers in a network, or in multiple networks or zones, rather than all speakers in a network or zone.

Consider claim 115, Orfield as modified discloses the sound masking system, wherein said zones include one or more of a sound masking zone, a non-masking zone, a timer zone, and a switch zone (see figs 1-4 and col. 4 line 65-col. 5 line 67).

Consider claim 116 Orfield teaches a networkable sound masking device comprising:

an interface (see figs 5-7(70,71,90)) configured to interfacing to a network (see figs 3-4);

a circuit (see figs 1-2) configured to receive one or more control signals from said interface (by jack and see figs. 5-7(70,71,90)), said one or more control signals being intended for the networkable sound masking device and said one or more control signals (46,48) comprising a masking volume signal (see fig.1 (22,48)) and a masking frequency signal(24,46 and see col.3 line 15-col 4 line 62); said circuit being configured to generate a sound masking signal(26,62) in response to said masking frequency signal; and an output stage configured to output said sound masking signal(see figs 1-4 and col. 4 line 65-col. 5 line 67) but Orfield does not disclose that the receiving and transmitting of the control signals over the communication network is performed by a digital processor; and that the control unit has a communication interface for coupling to the communication network for transmitting said control signals to selectively control operation of the plurality of sound masking units.

Shdema discloses a digital processor receives and transmits control signals over a communication network (see figs 1-5) and an audio speaker network / communication network comprising a plurality of speaker units including a communication interface for coupling speaker units (114) (i.e. sound masking units) to the communication network for receiving and transmitting control signals over the communication network (Fig. 1; page 3, [0028]-[0030]); and a control unit (see fig.2 102) that has a network interface for coupling the control unit to the communication network for transmitting control signals

over said communication network to the speaker units (i.e. sound masking units), and the control signals including signals for selectively controlling the operation of said sound masking units (Fig. 1 and see page 4 [0032]-[0045]) in order to allow an operator to remotely control the plurality of speaker units, which provides ease of adjusting a plurality of parameters such as volume, speaker equalization, and sound delay at a desired time; to receive status and/or control information from the speaker unit; and to provide more flexibility in a speaker system/network by allowing an operator to transmit a message to only selected speakers in a network, or in multiple networks or zones, rather than all speakers in a network or zone.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Shdema into Orfield to Provide more efficient mask system by using a processor and software control.

Consider claims 117-118 Orfield as modified by Shdema teaches the networkable sound masking device, wherein said interface includes an address component configured to recognize said one or more control signals intended for the networkable sound masking device(in Shdema, see figs 1-4 and see page 9[0104]-[0108]); and the networkable sound masking device, wherein said output stage comprises an amplifier and said processor being configured to control said output stage in response to said masking volume signal(in Shdema, see figs 1-5 and page 4 [0039]-[0044]).

5. Claim 119 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Orfield (US PAT. 4,319,088) as modified by Shdema et al (US 2002/0072816) as applied to claim 116 above, and further in view of Ritter (US PAT. 4,686,693).

Consider claim 119 Orfield and Shdema do not explicitly teach the networkable sound masking device, wherein said sound masking module comprises a random noise generator having an output coupled to an equalizer stage, and said processor being configured to control said equalizer stage in response to said masking frequency signal.

However, Ritter teach the networkable sound masking device, wherein said sound masking module comprises a random noise generator having an output coupled to an equalizer stage, and said processor being configured to control said equalizer stage in response to said masking frequency signal (see fig.1 and see col. 4 line 23-52).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Ritter into the teaching of Orfield and Shdema to provide the optimum adjustment of individual zone masking devices. Fine volume changes are easily made to meet the individual acoustic demands of the masking zone and the personal preferences of persons therein. The ease of adjustment makes it quite easy to slowly change the masking signal volume as needed, whereby the occupants of the masked area are not distracted by a sudden increase or decrease in background masking noise.

(10) Response to Argument

It is noted that A. claims 108-118 stand finally rejected under U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,319,088 ("Orfield") in view of U.S. Patent Application Publication No. 2002/0072816 ("Shdema").

B. Claim 119 stands finally rejected under U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,319,088 ("Orfield") as modified by U.S. Patent Application Publication No. 2002/0072816 ("Shdema") as applied to claim 116, and in further view of U.S. Patent No. 4,686,693 ("Ritter").81 Claims 108-119 are being appealed. VII. (c)(I)(vii) ARGUMENT A. Claims 108-118 are not rendered obvious by Orfield in view of Shdema

Appellant alleged that Orfield in view of Shdema does not teach " a sound masking system for masking sound in a physical environment, said sound masking system comprising: a communication network for said physical environment; a plurality of sound masking units, at least some of said sound masking units including a digital processor configured for a sound masking signal generator and a communication interface for coupling to said communication network for receiving a plurality of control signals over said communication network including a masking volume signal and a masking frequency signal, and said sound masking signal generator being responsive to said masking volume signal and said sound masking frequency signal for generating a sound masking output signal, said sound masking output signal having a volume derived from said masking volume signal and a frequency characteristic derived from said sound masking frequency signal; a control unit configured to generate said control signals including said masking volume signal and said masking frequency signal, and

said control unit having a communication interface for coupling to said communication network for transmitting said control signals to selectively control operation of said plurality of sound masking units" see page 29-33 and page 35 last paragraph to page 36, 2nd paragraph)

The examiner respectfully disagrees that argument. Orfield disclose a communication network for said physical environment (network formed by master sound masking units 14 and slave sound masking units 16 interconnected by cable 18; grid layout in fig. 4; col. 5, lines 56-63) (the network carries/communicates audio and masking signals from master to slave units, col. 6, lines 1-8);

a plurality of sound masking units (slave sound masking units 16, fig.3), at least some of said sound masking units including a circuit (fig. 2) configured for a sound masking signal generator (speaker 62) and a communication interface (jack 71, fig. 5) for coupling (fig. 5) to said communication network for receiving (slave out 64 from master unit 14 are carried to and tapped at point 86 of slave unit 16, fig. 1, 2, col. 4, lines 5-7 and 28-31) a plurality of control signals (masking sound signals from master unit 14) over said communication network including a masking volume signal (slave out 64 of amplifier 22 output adjusted by 48, fig. 1) and a masking frequency signal (slave out 64 of equalizer 24 output adjusted by 46, fig. 1), and said sound masking signal generator (speaker 62) being responsive (via 86, 66, 68, col. 4, lines 3-21) to said masking volume signal and said sound masking frequency signal (slave out signals tapped at 86) for generating a sound masking output signal (output through speaker 62), said sound masking output signal having a volume derived from said masking

volume signal and a frequency characteristic derived from said sound masking frequency signal (slave out signal 64 tapped at 86 has components from amplifier 22 and equalizer 24); a control unit (14) configured to generate said control signals including said masking volume signal and said masking frequency signal (slave out signal 64 tapped at 86 has components from amplifier 22 and equalizer 24).

On the other hand, Shdema discloses a digital processor receives and transmits control signals over a communication network (see figs 1-5) and an audio speaker network / communication network comprising a plurality of speaker units including a communication interface for coupling speaker units (114) (i.e. sound masking units) to the communication network for receiving and transmitting control signals over the communication network (Fig. 1; page 3, [0028]-[0030]); and a control unit (see fig.2 102) that has a network interface for coupling the control unit to the communication network for transmitting control signals over said communication network to the speaker units (i.e. sound masking units), and the control signals including signals for selectively controlling the operation of said sound masking units (Fig. 1 and see page 4 [0032]-[0045]) in order to allow an operator to remotely control the plurality of speaker units, which provides ease of adjusting a plurality of parameters such as volume, speaker equalization, and sound delay at a desired time; to receive status and/or control information from the speaker unit; and to provide more flexibility in a speaker system/network by allowing an operator to transmit a message to only selected speakers in a network, or in multiple networks or zones, rather than all speakers in a network or zone. The combination meets the limitation as recited in claim 108.

Appellant further alleged that Orfield does not teach the following limitations as recited in independent claim 108:

- a communication network
- a plurality of sound masking units including a communication interface
- a sound masking signal generator responsive to a masking volume signal
- a sound masking signal generator responsive to a masking frequency signal
- a control unit having a communication interface
- a control unit configured to generate the masking volume signal and the masking frequency signal (see page 34, 2nd paragraph).

The examiner respectfully disagrees that. Orfield discloses

- a communication network(network formed by master sound masking units 14 and slave sound masking units 16 interconnected by cable 18; grid layout in fig. 4; col. 5, lines 56-63) (the network carries/communicates audio and masking signals from master to slave units, col. 6, lines 1-8);
- a plurality of sound masking units(see fig.3 (14,16)) including a communication interface (by jack (70, 71 and 90) in figs. 5-7))
- a sound masking signal generator(see figs, 1,2 (26,62)) responsive to a masking volume signal (see fig.1 (22,48))
- a sound masking signal generator(see fig.1 (20)) responsive to a masking frequency signal (see fig.(24,46))
- a control unit(see figs.1, 6 (14)) having a communication interface(see fig.6 (70,90))

- a control unit (see fig.1 (14)) configured (by manual adjustment) to generate the masking volume signal(22,48) and the masking frequency signal(24,46 and see col.3 line 15-col 4 line 62). The combination meets the limitation as recited in claim 108.

The examiner respectfully submit these arguments similarly apply to claims 114 and 116.

Appellant further alleged that there is no motivation for one skilled in the art to combine the references for the reasons as discussed below. Secondly, even if one skilled in the art were to combine the teachings of Orfield and Shdema as suggested by the Examiner, Shdema does not remedy the deficiencies of Orfield and the resulting system is not the same as that defined by claims 108, 114 and 116.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Shdema et al. teaches the deficiencies of Orfield with respect to the claimed invention.
than all speakers in a network or zone.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Orfield with the teaching of Shdema to utilize a audio system for use in a speaker network system (such as the speaker network

system of Orfield) comprising: a control unit to transmit control data (audio data does not need to be transmitted to the speaker unit because the speaker unit of Orfield comprising a sound generator which provide an audio data to a digital signal processor) to a plurality of speaker units (i.e. sound masking units), wherein the speaker unit comprising a receiver for receiving the control data and a transmitter for transmitting status and/or control information from the sound masking unit to the control unit in order to allow an operator to remotely control the plurality of speaker units, which provide ease of adjusting a plurality of parameters such as volume, speaker equalization, and sound delay at a desired time; to receive status and/or control information from the speaker unit; and to provide more flexibility in a speaker system network by allowing an operator to transmit a message to only selected speakers in a network, or in multiple networks or zones, rather than all speakers in a network or zone.

In view of the foregoing, it is submitted that independent claims 108, 114 and 116 are obvious in view of Orfield taken in combination with Shdema. Since claims 109-113 and 117- 119 are dependent claims, it is submitted that these claims are also obvious for the same reasons and see the discussed above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/LUN-SEE, LAO/

Examiner, Art Unit 2614

August 3, 2010

Conferees:

/Vivian Chin/

Supervisory Patent Examiner, Art Unit 2614

/CURTIS KUNTZ/

Supervisory Patent Examiner, Art Unit 2614